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IN THE

# Supreme Court of the United States

CAROLINE WALLACE AND EMILY MAW,

*Petitioners,*

v.

PASCAL F. CALOGERO, JR., IN HIS OFFICIAL CAPACITY AS CHIEF JUSTICE OF THE LOUISIANA SUPREME COURT, ET AL.,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether the standard of review for analyzing an Equal Protection challenge to a state law that discriminates against nonpermanent visaholding resident aliens is: (a) strict scrutiny, the standard applied by this Court in *In re Griffiths*, 413 U.S. 717 (1973) and by the Fourth Circuit in *Moreno v. University of Maryland*, 645 F.2d 217 (4th Cir. 1981), *aff'd sub nom., Toll v. Moreno*, 458 U.S. 1 (1982); (b) some other form of heightened scrutiny; or (c) rational basis review, as the Fifth Circuit applied below.

2. Whether Federal immigration law preempts state licensing regimes that categorically ban H-1B visa-holders from obtaining a state license, as the Supreme Court of Vermont held in *Dingemans v. Board of Bar Examiners*, 568 A.2d 354 (Vt. 1989), or whether there is no preemption, as the Fifth Circuit held below.

## PARTIES TO THE PROCEEDINGS BELOW

The parties below were: Caroline Wallace and Emily Maw, appellees; and Pascal F. Calogero, in his official capacity as Chief Justice of the Louisiana Supreme Court; Jeffrey P. Victory, Jeannette Theriot Knoll, Chet D. Traylor, Catherine D. Kimball, John L. Weimer, and Bernette J. Johnson, in their official capacities as Justices of the Louisiana Supreme Court; Daniel E. Webb, in his official capacity as Chairman of the Louisiana Commission on Bar Admissions; and Harry J. Phillips, Jr., in his official capacity as Vice-Chairman of the Commission, appellants.

This case was consolidated on appeal by the Fifth Circuit with *Leclerc v. Webb*, where the appellants were Karen Leclerc, Guillame Jarry, Beatrice Boulord, and Maureen D. Affleck, and the appellees were the appellants listed above, with the exception of Chief Justice Calogero, who was not a party to the *Leclerc* action.

## TABLE OF CONTENTS


Page

QUESTIONS PRESENTED ..... i

PARTIES TO THE PROCEEDINGS BELOW ..... ii

TABLE OF CONTENTS ..... iii

TABLE OF AUTHORITIES ..... iv

OPINIONS BELOW ..... 1

JURISDICTION ..... 1

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED ..... 1

STATEMENT OF THE CASE ..... 2

REASONS FOR GRANTING THE WRIT ..... 5

I. The Decision Below Conflicts with this Court's Holdings and a Holding of the Fourth Circuit Regarding the Equal Protection Clause ..... 5

II. The Decision Below Conflicts with the Decision of a State Court of Last Resort Regarding Preemption ..... 11

CONCLUSION ..... 16

## TABLE OF AUTHORITIES

**Page(s)**

*In re Application of Appert*, 444 So.2d 1208 (La. 1984) ..... 2

*In re Application of Respondek*, 442 So. 2d 435 (La. 1983) ..... 2

*In re Bourke*, 819 So.2d 1020 (La.), *reh'g denied*, 820 So. 2d 565 (2002) ..... 2

*City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985) ..... 11

*De Canas v. Bica*, 424 U.S. 351 (1976) ..... 14

*Dingemans v. Board of Bar Examiners*, 568 A.2d 354 (Vt. 1989) ..... i, 12, 13, 15

*Graham v. Richardson*, 403 U.S. 365 (1971) ..... *passim*

*In re Griffiths*, 413 U.S. 717 (1973) ..... *passim*

*Hines v. Davidowitz*, 312 U.S. 52 (1941) ..... 13

*Leclerc v. Webb*, 270 F. Supp. 2d 748 (E.D. La. 2003) ..... 1, 4, 11

*Matthews v. Diaz*, 426 U.S. 67 (1976) ..... 10

*Moreno v. Toll*, 489 F. Supp. 658 (D. Md. 1980), *aff'd sub nom., Moreno v. University of Maryland*, 645 F.2d 217 (4th Cir. 1981), *aff'd sub nom., Toll v. Moreno*, 458 U.S. 1 (1982) ..... 10

*Moreno v. University of Maryland*, 645 F.2d 217 (4th Cir. 1981), *aff'd sub nom., Toll v. Moreno*, 458 U.S. 1 (1982) ..... i, 10

*Nyquist v. Mauclet*, 432 U.S. 1 (1977) ..... 6, 9, 10, 11

*Plyler v. Doe*, 457 U.S. 202 (1982) ..... 6, 11

*Takahashi v. Fish & Game Commission*, 334 U.S. 410 (1948) ..... 12, 14

*Toll v. Moreno*, 458 U.S. 1 (1982) ..... 10, 12, 14, 15

*Truax v. Raich*, 239 U.S. 33 (1915) ..... 12

*United States v. Carolene Prods. Co.*, 304 U.S. 144 (1938) ..... 8

**CONSTITUTIONAL PROVISIONS AND STATUTES**

U.S. Const. art. VI ..... 1, 11, 12, 13

U.S. Const. amend. XIV ..... 1, 10

8 U.S.C. § 1101 ..... 1

8 U.S.C. § 1101(a)(3) ..... 2

8 U.S.C. § 1101(a)(32) ..... 12

8 U.S.C. § 1101(a)(33) ..... 2

8 U.S.C. § 1101(a)(15) ..... 2, 12

8 U.S.C. § 1184(i)(2) ..... 13

26 U.S.C. § 7701 ..... 8

28 U.S.C. § 1254 ..... 1

28 U.S.C. § 1331 ..... 3

42 U.S.C. § 1983 ..... 3

**FEDERAL REGULATIONS**

8 C.F.R. § 214.2 ..... 8, 12, 13

22 C.F.R. § 41.11 ..... 8

**OTHER**

Case Comment, *Constitutional Law - Equal Protection - Fifth Circuit Holds that Louisiana Can Prevent Nonimmigrant Aliens from Sitting for the Bar,* 119 Harv. L. Rev. 669 (2005) ..... 6, 7, 8, 11

## OPINIONS BELOW

The opinion of the court of appeals is reported at *Leclerc v. Webb*, 419 F.3d 405 (5th Cir. 2005), and is reprinted in the accompanying Appendix at 1a. The Fifth Circuit's denial of petitioners' petition for rehearing en banc and the opinions of the seven judges dissenting from the denial of rehearing en banc are reported at 444 F.3d 428 (5th Cir. 2006). *See* App. 73a. The opinion of the District Court is reported at *Wallace v. Calogero*, 286 F. Supp. 2d 748 (E.D. La. 2003). *See* App. 44a.

This case was consolidated on appeal by the Fifth Circuit with *Leclerc v. Webb*. The opinion of the District Court in *Leclerc* is reported at 270 F. Supp. 2d 779 (E.D. La. 2003). The Leclerc plaintiffs are also petitioning for a writ of certiorari and Petitioners respectfully request that the Court consider the petitions together.

## JURISDICTION

The judgment of the Court of Appeals was entered on July 29, 2005. *See* App. 1a. Petitioners filed a timely petition for rehearing en banc on August 12, 2005. The Fifth Circuit denied the petition for rehearing over the dissents of seven members on March 27, 2006. *See* App. 73a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the Equal Protection Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, the Supremacy Clause, U.S. Const. art. VI, and several provisions of the Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et seq.*, the pertinent text of which are set out in the accompanying Appendix at 82a.

## STATEMENT OF THE CASE

This case presents important questions regarding the ability of States to discriminate against lawfully-admitted resident aliens.

Louisiana Bar Rule XVII, Section 3(B) ("Rule 3(B)") provides that every applicant for admission to the Bar must be "a citizen of the United States or a resident alien thereof." The Louisiana Supreme Court enforces Rule 3(B). In 2002, that Court reversed its decades-old prior interpretation and declared that "resident alien" referred only to aliens who were entitled to permanent residence in the United States. *Compare In re Bourke*, 819 So. 2d 1020, 1022 (La.), *reh'g denied*, 820 So. 2d 565 (2002) (denying application of nonpermanent visaholder) *with In re Application of Appert*, 444 So. 2d 1208, 1208 (La. 1984) and *In re Application of Respondek*, 442 So. 2d 435, 435 (La. 1983) (approving applications of nonpermanent visaholders).[1]

Petitioners Caroline Wallace and Emily Maw are citizens of the United Kingdom who reside lawfully in

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[1] "Resident alien" is not a defined term in the Immigration and Naturalization Act, 8 U.S.C. § 1101 *et seq.* The Act does define "immigrant" and "nonimmigrant" aliens. 8 U.S.C. § 1101(a)(15). Immigrant aliens are aliens granted permanent residence in the United States. *Id.* Nonimmigrant aliens are aliens granted temporary residence in the United States for specific purposes. *Id.* An "alien" is "any person not a citizen or national of the United States," *Id.* § 1101(a)(3), and "residence" means "the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." *Id.* § 1101(a)(33). As Judge Stewart observed below, "the term 'resident alien' is broader than the [Immigration] Act's immigration categories and includes both immigrant and nonimmigrant aliens lawfully residing in the United States." App. 38a-39a.

Louisiana under nonpermanent visas. Wallace holds an H-1B visa and works as a paralegal for the Capital Post Conviction Project of Louisiana. She has a law degree from Cambridge University, and is licensed to practice law in England and Wales. After the district court decision in her case, Wallace sat for and passed the Louisiana State Bar Examination, but has not been admitted, and will not be admitted unless the decision below is reversed.

Maw initially came to the United States under a student (F-1) visa to attend law school at Tulane University. Maw also holds an LLB from the University of Edinburgh. She received her J.D. from Tulane in 2003 and now resides lawfully in New Orleans under an H-1B visa. Maw is a member of the bar of the State of Mississippi; she is the director of Innocence Project New Orleans and represents indigent criminal defendants in Mississippi.

Both Wallace and Maw applied for admission to the Louisiana State Bar, with the goal of representing indigent criminal defendants, including capital case defendants, in Louisiana. The Bar denied their applications because they are not "resident aliens" under the Supreme Court of Louisiana's new interpretation of Rule 3(B). Wallace and Maw brought suit under 42 U.S.C. § 1983 against the members of the Louisiana Supreme Court and the executives of the Louisiana Committee on Bar Admissions alleging, *inter alia*, that Rule 3(B) violates the Equal Protection and Supremacy Clauses of the United States Constitution. The District Court had jurisdiction pursuant to 28 U.S.C. § 1331.

The District Court granted Wallace and Maw's motion for summary judgment on September 17, 2003, holding that Respondents' enforcement of Rule 3(B) to bar Petitioners' applications to the Louisiana Bar violated the Equal Protection Clause of the Fourteenth Amendment. App. 61a-72a. The District Court held that this Court's

decision in *In re Griffiths*, 413 US 717 (1973) required application of strict scrutiny review to Rule 3(B) because the Rule discriminated against aliens on the basis of their status as aliens. *Id.* at 67a-70a. In doing so, the District Court differed from the *Leclerc* trial court, which applied rational basis review and found Rule 3(B) to be constitutional. *See* 270 F. Supp. 2d at 800-01. Timely appeals in each case followed; the Fifth Circuit consolidated the cases for briefing and argument.

On July 29, 2005, a panel of the Fifth Circuit issued its decision in favor of Respondents. *See* App. 1a-35a. Judge Stewart dissented on the grounds that (1) decisions of this Court require application of strict scrutiny to challenges involving state actions that discriminate on the basis of alien status; and (2) that even if strict scrutiny did not apply, Rule 3(B) is still invalid because it is not rationally related to any legitimate state interest. *Id.* at 33a-43a.

Petitioners filed a timely petition for rehearing en banc on August 12, 2005. The Fifth Circuit denied the petition on March 27, 2006, over seven dissenting votes. Writing for seven members of the Court, Judge Higginbotham explained that the panel majority reached "its result by judicially crafting a subset of aliens, scaled by how it perceives the aliens' proximity to citizenship. This is a bold step not sanctioned by Supreme Court precedent." App. 75a. Judge Higginbotham observed that:

> As the federal judiciary draws distinctions between different classes of aliens, applying strict scrutiny to some and rational-basis review to others, it shifts responsibility over aliens from Congress to the States. This is perverse. The panel majority relaxes scrutiny of state regulation of aliens as the federal regulation of them is increased. This is too ambitious for me.

*Id.* at 77a. Judge Stewart penned a separate dissenting opinion, in which he expressed concern about the "far reaching consequences of the panel's holding." *Id.* at 78a.

## REASONS FOR GRANTING THE WRIT

This case arises in the context of bar admission rules, but the legal principles at issue apply to any state classifications that discriminate against lawfully-admitted nonpermanent visaholding aliens. Accordingly, the questions of (i) what standard of review should apply to equal protection analysis in such circumstances and (ii) to what extent may state classifications conflict with the federal immigration laws are of great significance. The Court should grant a writ of certiorari to resolve the conflict between the Fifth Circuit's decision below and prior decisions of this Court regarding the appropriate standard of review to apply to state classifications that discriminate against aliens—either as a class or against subclassifications of aliens. The decision below is also in direct conflict on this issue with a decision of the Fourth Circuit. The Court should also grant a writ of certiorari to resolve the conflict between the Fifth Circuit and a state court of last resort—the Supreme Court of Vermont—regarding the preemptive effect of federal immigration laws on state laws that prohibit visa-holding resident aliens from attaining state licenses to practice professions.

### I. The Decision Below Conflicts with this Court's Holdings and a Holding of the Fourth Circuit Regarding the Equal Protection Clause.

"Classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny." *Griffiths*, 413 U.S. at 721 (quoting *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971)). This Court repeatedly has held that state laws which discriminate solely against subclassifications of

lawfully-admitted aliens also must meet strict scrutiny review.[2] *See Graham*, 403 U.S. at 371-72 (applying strict scrutiny review in equal protection challenge to state law that affected only aliens who had not resided in the state for a certain period of time); *Nyquist v. Mauclet*, 432 U.S. 1, 8-9 (1977) (applying strict scrutiny to invalidate state law that prevented certain aliens from applying for state financial assistance for higher education).

*Griffiths* concerned an equal protection challenge to a Connecticut bar rule that prevented aliens from practicing law. The decision in *Griffiths* invalidating Connecticut's rule should have controlled here. The panel majority, however, sought to distinguish *Griffiths* on the ground that the plaintiff in *Griffiths* was a "permanent resident alien," even though the "permanent" qualifier does not appear anywhere in the *Griffiths* decision. App. 13a. Moreover, as Judge Stewart explained in dissent, this Court repeatedly has used the term "resident alien" to indicate simply "that the alien resides in the United States." *Id.* at 36a. As one commentator observed in analyzing the Fifth Circuit's decision, "The rationale settled upon–that nonimmigrants are transients who bear fewer social burdens than permanent residents–requires creative, counterintuitive interpretation of equal protection jurisprudence. Not only has the Supreme Court never differentiated equal protection review based on status as an immigrant or a nonimmigrant alien, but the governing cases also appear to downplay the relevance of aliens' transience." Case Comment, *Constitutional Law - Equal Protection - Fifth Circuit Holds that Louisiana Can Prevent Nonimmigrant Aliens from Sitting for the Bar*, 119 Harv. L. Rev. 669, 673 (2005) (hereinafter, "*Harvard Law Review* Comment").

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[2] The Court has not applied strict scrutiny review to illegal aliens. *See Plyler v. Doe*, 457 U.S. 202 (1982).

There is nothing in the *Griffiths* decision that suggests that the plaintiff's "permanent" status, as opposed to her alien status, had any relevance to the Court's decision invalidating Connecticut's rule that prevented aliens from becoming members of the bar. The plaintiff in *Griffiths* had not renounced her Dutch citizenship and had the same right to leave the United States at any time and return to her home country; as do petitioners here. *See* 413 U.S. at 718 n.1. "Evidently, the *Griffiths* Court believed that resident aliens could simultaneously express the desire to retain foreign citizenship and have a highly protected right to serve as an American attorney. This precedent cuts strongly against the [Fifth Circuit]'s reasoning." *Harvard Law Review* Comment, *supra* text, at 674.

The panel majority also sought to distinguish *Griffiths* on the basis of the following *obiter dictum* from the Court's decision: "[r]esident aliens, like citizens, pay taxes, support the economy, serve in the Armed Forces, and contribute in myriad other ways to our society. It is appropriate that a State bear a heavy burden when it deprives them of employment opportunities." 413 U.S. at 722. But, as Judge Stewart pointed out in his dissent below, it is highly doubtful that the Court intended these factors to be preconditions for strict scrutiny—for example, there was no indication that Ms. Griffiths had ever served in the armed forces, or that she was even physically able or young enough to do so.[3] "Instead, the basis for aliens' class designation seems to be premised on aliens' inability to vote, and thus their impotence in the political process, and the long history of invidious

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[3] As Judge Stewart explained, under the Tax Code and IRS regulations, petitioners Wallace and Maw pay taxes as "resident aliens" in the same manner as do green card holders. App. 36a & n.57.

discrimination against them." App. 38a. This is the very point this Court made in *Graham*: aliens are "a prime example of a 'discrete and insular' minority ... for whom such heightened judicial solicitude is appropriate." 403 U.S. at 372 (quoting *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152-53 n.4 (1938)).[4]

The panel majority also sought to distinguish *Griffiths* on the ground that the state law at issue there was a "wholesale ban" of aliens from the Connecticut Bar. App. 13a. This approach ignores this Court's holdings in *Graham* and *Nyquist*, which firmly establish that strict scrutiny is applicable when, as here, there is a "wholesale ban" that applies only to certain subclassifications of aliens. The Court's explicit rejection of an identical

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[4] The panel majority's assertion that Wallace and Maw are not part of a "discrete and insular minority," App. 17a, is off the mark for several reasons. *First*, since aliens as a whole are a "discrete and insular" minority due to their inability to participate in the political process, then subcategories of visa-holders like Wallace and Maw are at least as "discrete and insular" if not more so. *See Harvard Law Review* Comment, *supra* text, at 674 ("The alien class is suspect because of its political impotence, which is universal; subdivisions within this class do not alter the group's discrete and insular nature."). *Second*, the panel incorrectly stated that these lawful resident aliens are situated in a manner materially different from other aliens with respect to their "economic, social, and civic ... conditions." App. 18a. For instance, as Judge Stewart noted, "resident aliens" like Wallace and Maw pay taxes just like U.S. residents. App. at 36a & n.57 (citing 26 U.S.C. § 7701(b)). And, as Judge Stewart also pointed out, H-1B visa-holders like Wallace and Maw need not pledge a temporary stay in the United States to gain admission; they can have "dual intent" and seek permanent residence here. *See id.* at 39a (citing 22 C.F.R. § 41.11 (2006); 8 C.F.R. § 214.2(h)(16) (2006)).

argument in *Nyquist* requires rejection of the panel majority's rationale:

> Appellants claim that [the State law] should not be subjected to such strict scrutiny because it does not impose a classification based on alienage. Aliens who have applied for citizenship, or, if not qualified for it, who have filed a statement of intent to apply as soon as they are eligible, are allowed to participate in the assistance programs. Hence, it is said, the statute distinguishes "only within the 'heterogeneous' class of aliens" and "does not distinguish between citizens and aliens vel non." Only statutory classifications of the latter type, appellants assert, warrant strict scrutiny. ...
>
> *Graham v. Richardson* ... undermines appellants' position. In that case, the Court considered an Arizona statute that imposed a durational residency requirement for welfare benefits on aliens but not on citizens. Like the New York statute challenged here, the Arizona statute served to discriminate only within the class of aliens .... The Court nonetheless subjected the statute to strict scrutiny and held it unconstitutional. *The important points are that [the State law] is directed at aliens and that only aliens are harmed by it. The fact that the statute is not an absolute bar does not mean that it does not discriminate against the class.*

*Nyquist*, 432 U.S. at 8-9 (footnotes and citations omitted) (emphasis added).[5]

The panel majority decision also is in direct conflict with the Fourth Circuit's holding in *Moreno v. University of Maryland*, 645 F.2d 217 (1981), *aff'd sub nom., Toll v. Moreno*, 458 U.S. 1 (1982).[6] In *Moreno*, the district court, in a thorough opinion, relied upon *Griffiths*, *Graham*, *Nyquist*, and other holdings of this Court to determine that strict scrutiny applied to a state classification that precluded "nonimmigrant aliens"–that is, aliens residing in the United States under nonpermanent G-4 visas–from consideration for in-state tuition, and on this basis found that the classification at issue violated the Equal Protection Clause. *See Moreno v. Toll*, 489 F. Supp. 658, 660-67 (D. Md. 1980). The Fourth Circuit affirmed and adopted the district court's reasoning, stating that "we agree that the [classification at issue] is invalid under the Constitution." 645 F.2d at 220.

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[5] The panel majority also attempted to draw support for discriminatory treatment from *Matthews v. Diaz*, 426 U.S. 67, 83 (1976), a case involving eligibility for federal welfare benefits. *See* App. 18a-19a n.35. This case, too, is inapposite: as Judge Stewart explained, App. 34a, *Matthews* concerned the *federal* government's ability to draw distinctions based on alienage stemming from Congress' plenary power to regulate immigration, and has no application to a *State's* discriminatory practices.

[6] This Court affirmed *Toll* on Supremacy Clause grounds and thus had "no occasion to consider whether the policy violates the ... Equal Protection Clause." 458 U.S. at 10. The Fourth Circuit's alternate Equal Protection holding remains the law of that Circuit. In this case, the panel majority erroneously implied that the Court's failure to address the Equal Protection arguments in *Toll* created an ambiguity about the appropriate standard of review to apply. *See* App. 15a & n.26.

As both Judge Stewart and Judge Higginbotham pointed out in dissent, the panel majority could not explain how or why its approach should vary from this Court's binding precedent in *Griffiths*, *Nyquist*, and *Graham*. *See* App. 34a-42a (Judge Stewart), 75a-77a (Judge Higginbotham). Respondents conceded below that Rule 3(B) will not survive if strict scrutiny is applied. In fact, Rule 3(B) cannot survive under *any* form of heightened scrutiny because it is wholly over- and under-inclusive to remedy any problems caused by the "transiency" of members of the Lousiana Bar. This Court should grant certiorari in order to resolve this important issue and to forestall the "far reaching consequences" of the decision below. App. 78a.[7] Even the panel majority conceded, App. 12a, that there was "some ambiguity in Supreme Court precedent" regarding the appropriate level of scrutiny to apply, thereby implicitly recognizing that its application of rational basis review was not sanctioned by prior precedent.

## II. The Decision Below Conflicts with the Decision of a State Court of Last Resort Regarding Preemption.

Congress has established a comprehensive statutory scheme to govern the treatment of aliens and immigrants in the United States. *See* 8 U.S.C. §§ 1101 *et seq.* Petitioners argued below that the challenged rule is inconsistent with these statutory provisions and that it thus violates the Supremacy Clause. U.S. Const. art. VI.

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[7] At the very least, the Rule should be subject to some degree of heightened scrutiny, such as that employed in *City of Cleburne v. Cleburne Living Center*, 473 U.S. [illegible] (1985) or *Plyler v. Doe*, 457 U.S. 202 (1982). *See Harvard Law Review* Comment, *supra* text, at 674-75; *see also Leclerc v. Webb*, 270 F. Supp. 2d 748, 779 (E.D. La. 2003).

The Fifth Circuit rejected this argument. App. 31a-35a. Its decision is in direct conflict with a decision of the Supreme Court of Vermont, which invalidated under the Supremacy Clause a bar admission rule that discriminated against aliens holding H-1B visas, as are held by Petitioners here. *See Dingemans v. Board of Bar Examiners*, 568 A.2d 354, 356 (Vt. 1989).

The Supremacy Clause prevents states from enacting regulations that place burdens on resident aliens that are not authorized nor contemplated by Congress. *See Toll v. Moreno*, 458 U.S. 1, 17 (1982) (invalidating state policy of prohibiting certain nonpermanent visaholders from obtaining in-state tuition rates); *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 416 (1948) (striking down state law prohibiting a certain class of aliens from obtaining commercial fishing licenses); *Truax v. Raich*, 239 U.S. 33, 42 (1915) ("The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the state would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases, they cannot live where they cannot work."). Enforcement of the challenged rule not only places an additional burden on aliens that is not contemplated by Congress, it also conflicts directly with federal immigration law.

Federal law makes clear than an H-1B visa holder is admitted to the United States for the purpose of engaging in a "specialty occupation." 8 U.S.C. § 1101(a)(15)(H)(i)(b). Federal law also makes clear that a *lawyer* qualifies as one engaged in a "specialty occupation." *See* 8 C.F.R. § 214.2(h)(4)(ii) (2004) (term "specialty occupation" includes "law"); *see also* 8 U.S.C. § 1101(a)(32) (term "profession," from which definition of "specialty occupation" was derived, includes "lawyers"). Plainly, federal law contemplates that aliens may enter the United States under H-1B visas to work as lawyers.

Federal law also requires that an alien obtain "full state licensure to practice the occupation, if such licensure is required to practice in the occupation." 8 U.S.C. § 1184(i)(2)(A). In other words, "[i]f an occupation requires a state or local license for an individual to fully perform the duties of the occupation"—as the occupation of lawyer clearly does—an alien "*must have that license* prior to approval" of the H-1B visa. 8 C.F.R. § 214.2(h)(4)(v) (2004) (emphasis added). If federal policy requires an alien to "have" state licensure before qualifying for H-1B status as a lawyer, it necessarily contemplates that a prospective H-1B lawyer may at least *seek* state licensure in the first place. Louisiana's rule denies non-permanent alien lawyers that opportunity.

The conflict between federal immigration policy and Louisiana's bar admission rule is clear. On the one hand, federal law clearly contemplates that aliens may come to the United States to work as lawyers. On the other hand, by categorically excluding H-1B visa holders from bar membership, Louisiana's rule effectively precludes any alien from ever obtaining an H-1B visa to practice law in Louisiana. If Louisiana's rule were adopted by the rest of the States, federal law would provide for visas that could never issue. Because Rule 3(B) "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941), it cannot stand under the Supremacy Clause. *See Dingemans*, 568 A.2d at 356.

The Fifth Circuit concluded that there was no conflict because the H-1B licensure requirements are "permissive" and not "mandatory." App. 31a-32a. In other words, the Fifth Circuit found that there was no preemption because nonpermanent visaholding aliens seeking to work in the legal profession in Louisiana could do so in an unlicensed capacity (*e.g.*, as a paralegal). This erroneous application of preemption analysis conflicts

with this Court's decision in *Toll v. Moreno*, 458 U.S. 1 (1982).

*Toll* involved a statute which, like the rule at issue here, expressly discriminated against *nonpermanent* resident aliens. At issue in *Toll* was a Maryland policy that granted in-state tuition benefits to citizens and permanent resident aliens living in Maryland but denied those benefits to non-permanent resident aliens living in the State (including, as relevant there, G-4 visaholders whose parents worked at the World Bank). The Court emphasized that its prior cases took "pains to note the substantial limitations upon the authority of the States in making classifications based on alienage." *Id.* at 10.

The *Toll* Court relied upon *Takahashi v. Fish & Game Commission*, 334 U.S. 410 (1948), where the Court invalidated a California law that barred aliens who were ineligible for citizenship "from obtaining commercial fishing licenses, even though they 'met all other state requirements' and were lawful inhabitants of the State." *Toll*, 458 U.S. at 10 (quoting *Takahashi*, 334 U.S. at 414). The *Toll* Court also relied on *Graham v. Richardson*, which had held that state laws withholding welfare benefits from some (but not all) resident aliens both violated the Equal Protection Clause and were preempted by federal immigration law. The Court reasoned that by denying aliens welfare benefits the States had "imposed an 'auxiliary burde[n] upon the entrance or residence of aliens' that was never contemplated by Congress." *Toll*, 458 U.S. at 12 (quoting *Graham*, 403 U.S. at 379).

Summarizing, the Court in *Toll* observed that "[r]ead together, *Takahashi* and *Graham* stand for the broad principle that 'state regulation not congressionally sanctioned that discriminates against aliens lawfully admitted to the country is impermissible if it imposes additional burdens not contemplated by Congress.'" 458 U.S. at 12-13 (quoting *De Canas v. Bica*, 424 U.S. 351, 358 (1976)). The Court in *Toll* found that such an

impermissible burden existed in the case before it by employing the following reasoning: By virtue of federal treaties and statutes, the G-4 visa holders before it were "relieved of federal and, in many cases, state and local taxes" on their visa-related (*e.g.*, World Bank) income. *Toll*, 458 U.S. at 14. The federal government's purpose in granting G-4 visa holders such tax exemptions was "to benefit the employing international organizations by enabling them to pay salaries not encumbered by the full panoply of taxes," thereby "lowering the organizations' costs" and thus providing an "inducement for these organizations to locate significant operations in the United States." *Id.* at 16.

By imposing higher tuition costs on G-4 aliens, the Maryland policy at issue negated the aliens' tax advantages, which *in turn* could cause organizations like the World Bank to have to pay higher employee salaries, which *in turn* could increase those organizations' costs, which *in turn* could reduce their incentives to locate operations in the Unites States and thus "frustrate[] ... federal policies." *Id.* The frustration of congressional policy here is much starker and more direct than in *Toll*. Federal immigration laws provide that nonpermanent visaholding aliens may be admitted to the United States to work as lawyers. Yet, Rule 3(B) prohibits these same aliens from practicing law in Louisiana. As the Supreme Court of Vermont properly held in striking an identical discriminatory classification, "[t]he rule thus imposes a burden on the federal immigration program that could not have been intended by the Congress." *Dingemans*, 568 A.2d at 357 (citation omitted). The Court should grant a writ of certiorari to resolve this conflict.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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